

JUSTICE AND PUBLIC SAFETY CABINET
Department of State Police
(Amendment)

502 KAR 10:120. Hazardous materials endorsement requirements.

RELATES TO: KRS 281A.120, 281A.130, 281A.150, 281A.160, 281A.170, 49 U.S.C. 5103a, 49 C.F.R. Parts 383, 1515, 1572

STATUTORY AUTHORITY: KRS 281A.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.040 authorizes any state agency vested with a specific responsibility to have the necessary power and authority to promulgate administrative regulations to reasonably carry out the provisions of KRS Chapter 281A. 49 C.F.R. Part 1572 requires fingerprint verified criminal background checks on all persons obtaining or renewing a hazardous materials endorsement for a commercial driver's license. This administrative regulation establishes the necessary procedures for conducting fingerprint verified criminal background checks and establishing the location of the fingerprinting centers where the Kentucky State Police shall take fingerprints and transmit them to the federal government.

Section 1. Definitions. (1) "CDL" or "Commercial Driver's License" is defined by KRS 281A.010(5) and 49 C.F.R. 383.5.

(2) "Determination of No Security Threat" is defined by 49 C.F.R. 1572.15(d)(1).

(3) "DOT" means the federal Department of Transportation.

(4) "Final Determination of Threat Assessment" is defined by 49 C.F.R. 1572.15(d)(4).

(5) "Fingerprint centers" means the department's regional offices [~~of Kentucky State Police's Division of Driver's Testing~~] established to process the fingerprints of applicants for a hazardous materials endorsement for a commercial driver's license holder under KRS 281A.170(2)(b).

(6) "HME" means hazardous materials endorsement.

(7) "Initial Determination of Threat Assessment" is defined by 49 C.F.R. 1572.15(d)(2).

(8) "KSP" means the Kentucky State Police.

(9) "Proper identification" means:

(a) A driver's license issued by the applicant's state where they will obtain or have obtained a commercial driver's license; or

(b) With respect to non-United States citizens applying for a hazardous materials endorsement for a commercial driver's license, proper identification means valid and unrestricted documentation establishing lawful nonimmigrant alien, asylee, or refugee status.

(10) "TSA" means the federal Transportation Security Administration.

Section 2. Initial Applications for HME. (1) An applicant applying for a hazardous materials endorsement shall first obtain a commercial driver's instruction permit or CDL prior to requesting a security threat assessment from the TSA. A [~~In order to receive the security threat assessment, the applicant shall complete a~~] "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027, containing all information necessary for the TSA to complete the required assessment as described in 49 C.F.R. 1572.9 shall be submitted by the applicant. The applicant shall further submit to a fingerprint verified criminal background check conducted by KSP.

(2) To begin the process, an applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655.

(3) An applicant shall bring proper identification, ~~[their DOT medical card,]~~ a completed "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027, and a certified check of \$115 for the fingerprint fee.

(4) An applicant shall be fingerprinted by KSP. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint-verified criminal background check and send the biographical information sheet to the TSA.

(5) If TSA informs the Commonwealth of a finding of Determination of No Security Threat, then the applicant shall be notified by the Transportation Cabinet that he or she is eligible ~~[and may proceed to the circuit clerk's office]~~ to take the knowledge test required to qualify for the HME.

(6) If TSA informs the Commonwealth of a finding of Initial Determination of Threat Assessment, the applicant shall not be issued a HME. The applicant may appeal the TSA's determination in accordance with 49 C.F.R. 1515.5 or 1515.9. Following appeal, if the applicant receives a Final Determination of Security Threat Assessment, the applicant may seek a waiver from TSA in accordance with 49 C.F.R. 1515.7.

(7) Within fifteen (15) days after the TSA has notified the Commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Security Threat Assessment, the Transportation Cabinet shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

Section 3. Renewal Applications For HME. (1) The Transportation Cabinet shall send persons holding a HME notice of renewal at least sixty (60) days prior to expiration.

(2) Persons wishing to renew their HME shall begin the renewal process at least thirty (30) days prior to expiration.

(3) To begin the renewal process, a renewal applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655. A renewal applicant shall submit to fingerprinting and further complete the "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027, containing all information necessary for the TSA to complete the required assessment as described in 49 C.F.R. 1572.9 no later than thirty (30) days prior to the expiration of the HME endorsement.

(4) A renewal applicant shall bring to the appointment proper identification, ~~[the applicant's DOT medical card,]~~ a completed "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027, and a certified check of \$115 for the fingerprint fee.

(5) A renewal applicant shall be fingerprinted by KSP. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint verified criminal background check and send the biographical information sheet to the TSA.

(6) If the Commonwealth has not received notification from TSA of the results of the security threat assessment prior to the expiration of the renewal applicant's HME, the Transportation Cabinet may extend the expiration date of the HME for a period up to ninety (90) days. Any additional extension shall be approved by TSA.

(7) If TSA informs the Commonwealth of a finding of Determination of No Security Threat, then the renewal applicant shall be notified by the Transportation Cabinet that he or she is eligible ~~[and may proceed to the circuit clerk's office]~~ to take the knowledge test required to qualify for the HME.

(8) If TSA informs the Commonwealth of a finding of Initial Determination of Threat Assessment, the renewal applicant shall not be issued a HME. The renewal applicant may appeal the TSA's determination under the procedures set forth in 49 C.F.R. 1515.5 or 1515.9. Following

appeal, if the renewal applicant receives a Final Determination of Security Threat Assessment, the applicant may seek a waiver from TSA in accordance with 49 C.F.R. 1515.7.

(9) Within fifteen (15) days after the TSA has notified the Commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Security Threat Assessment, the Transportation Cabinet shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

(10) An applicant who has received a passing score on the HME test and is applying for a Class C CDL with a hazardous endorsement shall drive a Class C placarded vehicle for the skills test.

Section 4. Transfer Applications For HME. (1) In accordance with 49 C.F.R. 1572.13(e), an applicant who applies to transfer an existing HME from another state to the Commonwealth shall not be required to undergo a new security threat assessment until the security threat assessment renewal period established in the preceding issuing state, not to exceed five (5) years, expires.

Section 5. Regional Fingerprint Centers. KSP shall provide fingerprinting centers, regionally situated to provide efficient coverage of the state. Locations of the regional fingerprinting centers shall be published on the department's website ~~[have eight (8) regional fingerprinting centers in the Commonwealth. These centers shall be located in the following cities:~~

- ~~(1) Lexington at 162 East Main Street, Room 201, Lexington, Kentucky 40507;~~
- ~~(2) Louisville at Bowman Field, 3501 Roger E. Schupp Street, Louisville, Kentucky 40205;~~
- ~~(3) Erlanger at 645 Stevenson Road, Erlanger, Kentucky 41018;~~
- ~~(4) Paducah at McCracken County Courthouse, South 7th, Paducah, Kentucky 42003;~~
- ~~(5) Madisonville at Hopkins County Courthouse, Main Street, Room 11, Madisonville, Kentucky 42431;~~
- ~~(6) Bowling Green at Warren County Courthouse, 1001 Center Street, Room 103, Bowling Green, Kentucky 42101;~~
- ~~(7) London at 225 West 5th Street (corner of 5th and Long Street), London, Kentucky 40743; and~~
- ~~(8) Paintsville at Johnson County Courthouse, Court Street, 2nd Floor, Paintsville, Kentucky 41240].~~

Section 6. Incorporation by Reference. (1) "Transportation Security Administration Application for a Hazardous Materials Endorsement" OMB No. 1652-0027, Exp. 1/31/08, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at any KSP regional fingerprint centers, and at KSP Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 8:00 a.m. on November 22, 2021 at 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be can-

celed. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the necessary procedures for conducting fingerprint verified criminal background checks and establishing the location of the fingerprinting centers where the Kentucky State Police shall take fingerprints and transmit them to the federal government.

(b) The necessity of this administrative regulation: This regulation is necessary in order to carry out the provisions of KRS 281A.040 and the applicable federal statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statute by providing guidance to the promulgated regulations implementing KRS 281A.040 and the applicable federal statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation assists in the administration of the statutes by clarifying the statutory authority and the initial application and renewal procedures for HME.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment accurately reflects the statutory authority and clarifies the initial application and renewal procedures for HME.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statute by providing guidance to the promulgated regulations implementing KRS 281A.040 and the applicable federal statutes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the statutory authority and the procedures utilized by the department.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police; driver training schools; driver training school instructors; driver training school facilities; applicants for a HME.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No new or additional actions will have to be taken by the regulated entities in order to effectively comply with this amended regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Nothing.

(c) As a result of compliance, what benefits will accrue to the entities: They will benefit from having the correct statutory authority cited.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this regulation does not establish any new fees; nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Kentucky State Police; driver training schools; driver training school instructors; driver training school facilities; applicants for a HME.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 281A.040 and the applicable federal statutes.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? Nothing.

(d) How much will it cost to administer this program for subsequent years? Nothing.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: None.